FOR 1867!

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teachings of the founders and expositors of our government and institutions. It will endeavo to guard with vigilance and defend with unwavering earnestness and faith the rights and into rests of all the States, and the essential principles which constitute the baris of the Republic We shall oppose all invasions of these, and uphold, to the atmost of our ability, the union are endangered by the ravolutionary schemes of the agreement of counsel, the application the Radical politicians who now hold the Logislative power of the Government, we shall abate of the Judges of the Circuit Court were rething of our past opposition to their mensuces. With these views, which are no less than . Mound convictions, we cannot and will no hesitate to defend the unfortunate South from the aspersions and impositions heaped upon it people, and urge that Jerrick and Room; shall he mated out to them.

Our Manufacturing and ibo mentic Interests.

We shall constantly admenish the Southe people to be self-reliant, and shall do what w may be able to induce the establishment manufactories in our midst for our home procation of Southern industries and the develop-

Our Financial and Commer

cial Column. Every department of business has an imma diate interest in the markets of the country, and in its financial fluctuations and condition. The visad as to the rise and fall of the markets, as | with a preliminary objection. It is insisted and the relative condition of the corrency, is authority to certify these questions, and exposed to constant loss, and must necessarily that we are without jurisdiction to hear fall behind his more intelligent and enterprising and determine them. The sixth section of neighbors. In order to make our paper valuable | the "Act to amend the judicial system of | or their counsel." Such a literal and tech as well as interesting, we shall continue to the United States," approved April 29, make this a SPECIAL FRATURE. Our Daily Market Reports, domestic and foreign, by telegraph, and our City Reports, gotten up at heavy expense, have challenged the commendation of cial Reports from all the leading money centres of the country are fuller than have ever been; or their counsel, be stated under the direcpublished by any other journal in Tennestice.

Upon the Subject of Agriculture And kindred topics, we shall also give an extensive variety of valuable and interesting matter-the best adapted to the farming classes of our State, which will, in a great measure, sup- | shall prevent the cause from proceeding, if ply the place of a family agricultural paper.

For the Family Circle,

and religious miscellany. Nothing shall find its way into our columns unfit for the perusul of | Circuit Court had jurisdiction to entertain the mothers and daughters of the land. Depre- the application for the writ of habeas corcontemporary journals, we shall eachew that | could not be denied; for the power is excharacter striving to give the reader substantial

Decisions of the Supreme

REDUCTION OF RATES.

values the price of subscription to these editions waive the issuing of the writ and consider President had practically suspended it, and wicked rulers, or the clamor of an excited ment, before any one be held to answer for what the price of subscription to these editions whether over the following of the writer of the price of subscription to these editions whether over the following of the writer over the following over the following of the writer over the following over We do so the more cheerfully because the necessary whether, upon the facts presented in the satisfier of the people in the improvemental condition, the prisoner, if brought before it, tion of our stricken personal reasons as can be reasonably made in their in terests. From and after the Lat January, there-

TERMS OF SUBSCRIPTION WILL BE -IN ADVANCE-

VOL. XXXIII.

Union and Dispatch.

PRIDAY, JANUARY 4, 1867. ILLEGALITY OF MILITARY COM-

MISSIONS TO TRY CIVILIANS.

inpreme Court of the United States No. 356.—December Tensi, 1865.

Es parte in matter of Lambelin P. Milligan petitioner. On a certificate of division pinion between the Judges of the Circuit and of the United States for the District of Mr. Justice Davis delivered the opinion

On the 10th day of May, 1865, Lambdin P. Milligan presented a petition to the Circuit Court of the United States for the District of Indiana to be discharged from an alleged unlawful imprisonment. case made by the petition is this: Milligan is a citizen of the United States; has lived for twenty years in Indiana, and at the time of the grievances complained o was not, and never had been, in the mili tary or naval service of the United States.

ict of Indiana, and has ever since been kept in close confinement. On the 21st day of October, 1864, he was brought before a military commission, convened at Indianapolis by order of General Hovey, tried on certain charges and specifications, found guilty, and sentenced to be

On the 2d day of January, 1865, after he proceedings of the military commission were at an end, the Circuit Court of the United States for Indiana met at Indianapolis and empanuelled a grand jury, who were charged to inquire whether the laws of the United States had been violated, and if so, to make presentments. The court adjourned on the 27th day of January, aving prior thereto discharged from fur her service the grand jury, who did not find any bill of indictment or make any presentment against Milligan for any ofense whatever, and in fact, since his imprisonment no bill of indictment has been found or presentment made against him by any grand jury of the United States.

Milligan insists that said commission had o jurisdiction to try him upon the charges referred, or upon any charges whatever, States and the State of Indiana, and had not been, since the commencement of the late rebellion, a resident of any of the States whose citizens were arrayed against the government, and that the right of trial by jury was guaranteed to him by the con-The prayer of the petition was, that un-

er the act of Congress, approved March , 1863, entitled " An act relating to habeas corpus and regulating judicial proceedings in certain cases," he may be brought before the court, and either turned over to the fore, will take the Constitution and laws for its proper civil tribunal to be proceeded guide; and in the discussion of all the new and against according to the law of the land, intricate quantions and issues arising out of the or discharged from custody altogether. With the petition were filed the order cations, the findings of the court, with the rder of the War Department, reciting that the sentence was approved by the President the United States, and directing that i se carried into execution without delay open court by the counsel for Milligan; at the same time the District Attorney of the

> ed to the Supreme Court : 1st. "On the facts stated in said petition ad exhibits, ought a writ of habeas corpus

2d. "On the facts stated in said petitic

United States for Indiana appeared, and, b

and exhibits, ought the said Lambdin P. Milligan to be discharged from custody, as n said petition prayed ?" "Whether, upon the facts stated is id petition and exhibits, the military

ion mentioned therein had juris iction legally to try and sentence said Milligan, in manner and form as in said etition and exhibits is stated?" The importance of the main question presented by this record cannot be overtated; for it involves the very funda-During the late wicked rebellion the emper of the times did not allow that almness in deliberation and discussion so ecemany to a correct conclusion of a purely udicial question. They considerations of safety were mingled with the exercise of lower, and feelings and interests prevailed which are happily terminated. Now that he public safety is assured, this question as well as all others, can be discussed and lecided without passion or the admixture

adgment. We approach the investigation of this case, fully sensible of the magnitude of the inquiry and the necessity of full and cautions deliberation. But we are met that the Circuit Court of Indiana had no 1802, declares "that whenever any question shall occur before a circuit court upon which the opinions of the judges shall be opposed, the point upon which the dimreement shall happen shall, during the same term, upon the request of either party seal of the court to the Supreme Court at shall by the said court be finally decided; and the decision of the Supreme Court and

in the opinion of the court, further proceedings can be had without prejudice to It is under this provision of law that a circuit court has authority to certify any question to the Supreme Court for adjudication. The inquiry, therefore, is, whether the case of Milligan is brought within its pus and to hear and determine it; and it cause of the commitment; and this conthat the proceeding by a party moving for

prisoner would be remanded to prison." arrest the attention of the country, that this The Judges of the Circuit Court of Indi-

eal, if the court renders a final judgent refusing to discharge him; but if he suld be so unfortunate as to be placed in the edicament of having the court divided on the question whether he should live or lie, he is hopeless and without remedy. He wishes the question settled, not by a ingle Judge at his chambers, but by the highest tribunal known to the constitution; and yet the privilege is denied him because the circuit court consists of two judges instead of one. Such a result was not in the stemplation of the Legislature of 1802, ad the language used by it cannot be con-

where the judges might be opposed in estem that the Circuit Court, instead of the judges differed, the difference would renains the question be unsettled, and justice On the 5th of October, 1864, while at home, he was arrested by order of General Alvin denied. The decisions of this court upon . Hovey, commanding the military disthe provisions of this section have been numerous. In United States vs. Daniel (6 ne question must be one which arises in a cause depending before the court relative o a proceeding belonging to the cause," hanged, and the sentence ordered to be ex- Testing Milligan's case by this rule of law, it not apparent that it is rightfully here. and that we are compelled to answer the mestions on which the judges below were oposed in opinion? If, in the sense of the iw, the proceeding for the writ of habeas corpus was the "couse" of the party applying for it, then it is evident that the "cause"

> questions certified arose out of it, belonged it, and were matters of right and not of But it is argued that the proceeding does ot ripen into a cause until there are two parties to it. This we deny. It was the use of Milligan when the petition was resented to the Circuit Court. It would save been the cause of both parties, if the court had issued the writ and brought se who held Milligan in custody before Webster defines the word "cause" us: "A suit or action in court; any legal rocess which a party institutes to obtain is demand, or by which he seeks his ight, or supposed right"-and he says, this is a legal, scriptural, and popular use

was pending before the court, and that the

In any legal sense, action, suit, and cause trial and sentence; and the proceeding which he set in operation for that purpose was his "cause" or "suit." It was the iven by this court. One of the questions Western vs. City Council of Charleston Peters) was, whether a writ of probibion was a suit; and Chief Justice Mar chall says: "The term is certainly a comrehensive one, and is understood to apwhich an individual pursues that remly which the law affords him." Certainly Milligan pursued the only remedy which was submitted to the court. The opinions

the law afforded him. Again, in Cohens va. Virginia, (Wheapposed on three questions, which are certion,) he says: "In law language a suit is he prosecution of some demand in a court instice." Also, "to commence a suit is demand something by the institution of rocess in a court of justice; and to prose ute the suit is to continue that demand. When Milligan demanded his release by the proceeding relating to habeas corpus h mmenced a suit, and he has since proseuted it in all the ways known to the law. One of the question in Holmes vs. Jenni son (14 Peters) was, whether under the 25th section of the judiciary act a proceeding for a writ of hubeas corpus was a "suit. s unlawfully imprisoned, the writ of haseas corpus is his appropriate legal remedy t is his suit in court to recove his liberty. There was much diversity of opinion of mother ground of jurisdiction, but on this that in the sense of the 25th section of the adiciary act, the proceeding by habea orpus was a suit, was not controverted by my except Baldwin, Justice, and he thought section, mean the same thing.

The court do not say that a return mus e made, and the parties appear and begin try the case before it is a snit. When ne petition is filed and the writ prayed or, it is a suit-the suit of the party making the application. If it is a suit under the 25th section of the judiciary act, when the proceedings are begun, it is, by the malogies of the law, equally a suit under the 6th section of the act of 1802.

But it is argued that there must be two

parties to the suit, because the point is to be stated upon the request of "either party nical construction would defeat the very purpose the Legislature had in view, which was to enable any party to bring the case here, when the point in controversy was matter of right and not of discretion, and the words "cither party," in order to prevent a failure of justice, must be construed a words of enlargement, and not of restric tion of the judges and certified under the tion. Although this case is here er parte, i their next session to be held thereafter, and | without notice having been given to the party supposed to have an interest in the etention of the prisoner. The statements of the record show that this is not only to the circuit court and be there entered of fair, but conclusive inference. When the connecl for Milligan presented to the courthe nature of said judgment and order Mr. Hanna, the district attorney for Indi ana, also appeared; and, by agreement, the application was submitted to the court, who took the case under advisement, and on the next day announced their inability to agree and made the certificate. It is clear that Mr. Hanna did not represent the petitioner and why is his appearance entered? terms. It was admitted at the bar that the | test it. The government was the prosecu tor of Milligan, who claimed that his im prisonment was illegal, and sought, in the only way he could, to recover his liberty The case was a grave one; the court, un pressly given in the 14th section of the questionably, directed that the law officer act of 1863. Chief Justice Mar-hall, in He very properly appeared, and as the the United States, imprisoned, and, Rollman's case, (4 Cranch,) construed this facts were uncontroverted and the difficulty | tain criminal charges preferred against him. branch of the judiciary act to authorize the | was in the application of the law, there courts as well as the judges to issue the was no useful purpose to be obtained in writ for the purpose of inquiring into the issuing the writ. The cause was, therefore, ability that a certificate of division of the of the act of Congress relating to habens tion was ever considered by this court, nor writ of habeas corpus does not become a 1863. Did that act confer jurisdiction on portant decisions of the Supreme Court, from and a rotten mode.

submitted to the court for their consideration and determination. But Milligan claimed his discharge from custody by virbases his claim for relief, and which we will presently consider, can this position be sustained?

It is true that it is possel, and which we resident the agricultural prosecutions the national authority, of creater proportions than bistors affects at time of the same of the sixth amendment affirms that "in all crimical prosecutions of the accused shall enjoy the right to a speedy creater proportions than bistors affects at time of the same of th It is true that it is usual for a court, on ap-lication for a writ of habeas corpus, to is-We are statified at being able to state that plication for a writ of habras corpus, to inspe the writ, and on the return to dispose required that the privilege of the writ of human rights are secured; withdraw that sons and cases; but the fifth, recognizing reported in 3 Peters, turned was, whether, if the Legislature, and not the Previlent, if the writt was issued, the petitioner would be remanded upon the case which he had made.

The control of the written and the previlent, in the Legislature, and not the Previlent, in the Legislature, and not the Previlent, in the second description of this question does not depend on argument or judicial precedents, numerous and highly illustrative as those persons who were subject to indictional previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the fifth that the previous and highly illustrative as the previous and highly illustrative as the fifth that the previous and highly illustrative as the previous and highly The Chief Justice, in delivering the before been withheld from the citizen; and the extent of the struggle to preserve liberopinion of the court said. The cause of as the exigence of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrisonment is shown as fully by the period of the times demanded immigrison in the period of the times demanded in the period of the times demanded immigrison in the period of the times demanded in the period of the times demanded immigrison in the period of the times 612 00 opinion of the court, said: "The cause of as the exigence of the times demanded im-

does not authorize the arrest of any one, which says, "that the trial for all crimes,

It is proper, therefore, to inquire under what circumstances the courts could right- person and effects against unreasonable ally refuse to grant this writ, and when search and seizure; and directs that a juhe citizen was at liberty to invoke its aid. I dicial warrant shall issue "without proof The second and third sections of the law of probable cause supported by oath or afused is plain and direct, and the meaning

the cause of his detention on return to a of war or public danger, nor be deprived of

writ of habeas. But it was not contem- life, liberty, or property without due pro-

strued to mean any such thing. The clause under consideration was introduced to furplated that such person should be detained cess of law." And the sixth guarantees n custody beyond a certain fixed period, the right of trial by jury in such a manner ther the ends of justice by obtaining a speedy settlement of important questions nless certain judicial proceedings known and with such regulations that, with upo the common law were commend against | right Judges, impartial juries, and an able him. The Secretaries of State and War were | bar, the innocent will be saved and the directed to furnish to the judges of the courts of the United States a list of the all criminal prosecutions the accused shull names of all parties, not prisoners of war, enjoy the right to a speedy and public tri aree, was composed of two judges; and resident in their respective jurisdictions, who then were or afterwards should be held in costedy by the authority of the President, and who were citizens of States in which the administration of the laws in the Federal tribunals was unimpaired. After the list was furnished, if a grand jury Wheaton) the cenrt, in holding that a di- of the district convened and adjourned, and vision of the judges on a motion for a new | did not indict or present one of the persons trial could not be certified, say: "That thus named, he was entitled to his dis- his defense." These securities for personal charge; and it was the duty of the judge of the court to order him brought before him to be discharged, if he desired it. The refusal or omission to furnish the list coul not operate to the injury of any one who was not indicted or presented by the grand jury; for if twenty days had elapsed from he time of his arrest and the termination of the session of the grand jury, he was equally entitled to his discharge, as if the list were furnished; and any credible per- I the belief that it would be so amended as

son, on petition verified by affidavit, could [

obtain the judge's order for that purpose.

Milligan, in his application to be re-

ancestors; for even these provisions, ex-pressed in such plain English words that i eased from imprisonment, averred the exstence of every fact necessary under the would seem the ingenuity of man could erms of this law to give the Circuit Court not evade them, are now, after the lapse of of Indiana jurisdiction. If he was detained in custody by the order of the President, more than seventy years, sought to be avoided. Those great and good men foreotherwise than as a prisoner of war; if he saw that troublous times would arise, when was a citizen of Indiana, and had never rulers and people would become restive been in the military or naval service, and the grand jury of the district had met, after inder restraint, and seek by sharp and de sive measures, to accomplish ends deemed he had been arrested, for a period of twenty days, and adjourned without taking any ist and proper, and that the principles of constitutional liberty would be in peril un-less established by irrepealable law. The proceedings against him, then the court had the right to entertain his petition and deistory of the world had taught them that termine the lawfulness of his imprisonwhat was done in the past might be attemptment. Because the word "court" is not ed in the future. The constitution of the of the word, coinciding nearly with case found in the body of the second section, it United States is a law for rulers and people, from cade, and action from ago, to orge and | was argued at the bar that the application equally in war and in peace, and covers should have been made to a judge of the court, and not to the court itself; but this is with the shield of its protection all classes of men, at all times, and under all circum are convertible terms. Milligan supposed he had a right to test the validity of his in the last provise of the section on the stances. No doctrine involving more pe nicious consequences was ever invented by court equally with a judge of it to discharge from imprisonment. It was the manifest design of Congress to secure a certain only one by which he could recover his remedy by which any one deprived of berty. He was powerless to do more; he liberty could obtain it, if there was a procure their liberation. To provide for his contingency, authority was given to the frow off its just authority. udges out of court to grant relief to any party who could show that, under the law se should be no longer restrained of his

Millionn? and if so, what are they? Every rial involves the exercise of judicial power; nd from what source did the military com was defective, because it did not state that nission that tried him derive their authori the list was furnished to the judges, and therefore, it was impossible to say under the country was conferred on them, because which section of the act it was presented It is not easy to see how this omission ould affect the question of jurisdiction the Congress may from time to time ordain and establish," and it is not pretended that Milligan could not know that the list was fornished, unless the judges volunteered to tell him; for the law did not require that the commission was a court ordained and established by Congress. The cannot just any record should be made of it, or any tify on the mandate of the President, be body but the judges informed of it. Why cause he is controlled by law, and has h aver the fact, when the truth of the mate appropriate sphere of duty, which is t was apparent to the court without an averexecute, not to make the laws; and ther How can Milligan be harmed by "no unwritted criminal code to which the absence of the averment when he states resort can be had as a source of inriadiction." But it is said that the jurisdiction that he was under arrest for more than sixty days before the court and grand jury, is complete under the "laws and usages of which should have considered his case, me war." It can serve no useful purpose t at Indianapolis? It is apparent, therefore, that under the habeas corpus act of 1863 the Circuit Court of Indiana had complete jurisdiction to adjudicate upon this case, and if the judges could not agree on questions vital to the progress of the cause they had the authority, (as we have mobstructed. This court has judicia shown in a previous part of this opinion. thority was always unopposed, and its courts always open to hear criminal accusations tions of disagreement to this court for fina decision. It was argued that a final deci sion on the questions presented ought not to be made, because the parties who were directly concerned in the arrest and detention of Milligan were not before the court; and their rights might be prejudiced and, to the honor of our national legislaby the answer that should be given to those nestions. But this court cannot know what return will be made to the writ its exercise. One of the plainest constitu habeas corpus when issued; and it is very onal provisious was, therefore, infringed clear that no one is concluded upon any hen Milligan was tried by a court not orquestion that may be raised to that re ained and established by Congress, and not turn. In the sense of the law of 1802, emposed of Judges appointed during good which authorized a certificate of division, a ehavior. Why was he not delivered to final decision means final upon the points

sanged in pursuance of the order of the President. Although we have no judicial aformation on the subject; yet the infernce is that he is alive; for otherwise errned counsel would not appear for him and urge the court to decide his case. It can never be in this country of writen constitution and laws, with a judicia epartment to interpret them, that any hief Magistrate would be so far forgetful nan who denied the jurisdiction that tried nd convicted him, after his case was before Federal judges, with power to decide it who, being unable to agree on the grave uestions involved, had, according to known aw, sent it to the Supreme Court of the United States for decision. But even the uggestion is injurious to the Executive, and we dismiss it from further considera

certified; final upon the court below, so

that it is estopped from any adverse ruling

in all the subsequent proceedings of the

cause. But it is said that this case is ended,

as the presumption is that Milligan was

on. There is, therefore, nothing to hiner this court from an investigation of the erits of this controversy. The controlling question in the case his: Upon the facts stated in Milligan's petition, and the exhibits filed, had the ommission mentioned in it jurisdiction le gally to try and sentence him? Milligan ot a resident of one of the rebellions States, or a prisoner of war, but a citizen of Indiana for twenty years past, and neve in the military or naval service, is, while of the government should be informed of it. at home, arrested by the military power of ried, convicted, and sentenced to be hanged by a military commission organized under he direction of the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man? No graver quesone which more nearly concerns the rights of the whole people; for it is the birthright habeas corpus should be suspended. The protection, and they are at the mercy of the necessity of an indictment, or present-The privilege of this great writ had never they are. These precedents inform us of a on the writ; consequently the writought not to should be fully established. It was under be awarded if the court is satisfied that the these circumstances, which were such as to stitution every right which the people had tution, Congress has declared the kinds of

citizens of States where the courts are open, sixth articles of the amendments. The privilege is a vital principle, underlying fourth proclaims the right to be secure in the whole administration of criminal justice; it is not held by sufferance, and cannot be frittered away on any plea of State

NASHVILLE, TENNESSEE, FRIDAY, JANUARY 4, 1867.

ly an impartial jury of the State and di-

committed, which district shall have been

and to have the assistance of counsel for

f crime. And so drong was the sense

the country of their importance, and

implication, that when the original consti

countered severe opposition, and, but for

Time has proven the discernment of our

tution was proposed for adoption, it en

or political necessity. vails, and the authority of the government are explicit on these points. The language tirmation." The fifth declares "that no per- is undisputed, there is no difficulty of preserving the safeguards of liberty; for the son shall be held to answer for a capital or of the Congress cannot be mistaken. The otherwise infamous crime unless on pre- ordinary modes of trial are never neglected, public safely demanded, if the President sentment by a grand jury, except in cases and no one wishes it otherwise. But if sothought proper to arrest a suspected per-son, that he should not be required to give the militia, when in actual service in time the passions of men are aroused and the restraints of law weakened, if not disregarded-these safeguards need, and should receive, the watchful care of those enwe transmit to posterity, unimpaired, the blessings of liberty, consecrated by the sacrifices of the revolution.

guilty punished. It is these words: "In It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: That in a time of war the commander of an armed force (if in his opinion the exigencies of the country demand it, previously ascertained by law, and to be and of which he is to judge,) has the pownformed of the nature and cause of the er, within the lines of his military district, accusation, to be confronted with the witsuspend all civil rights and their reme nesses against them, to have compulsory lies, and subject citizens as well as soldiers process for obtaining witnesses in his favor. to the rule of his will; and in the exercise of his lawful authority cannot be restrained, except by his superior officer or the Presiliberty thus embodied, were such as wisdom and experience had demonstrated to be dent of the United States. If his position is sound to the extent claimed, thep when secessary for the protection of those accused war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the comjealous were the people that these rights, highly prized, might be denied them by mander of one of them van, if he chooses, within his limits, on the plea of necessity with the approval of the Executive, substitote military force for and to the exclusion of the laws, and punish all persons as he to embrace them, it would never have been

certain rules. The statement of this proposition shows ts importance; for, if true, republican govtablished on such a basis, destroys every guaranty of the constitution, and effectualrenders the "military independent of nd superior to the civil power"-the attempt to do which by the King of Great Britain was deemed by our fathers such an offense that they assigned it to the world as one of the causes which impelled them to leclare their independence. Civil liberty and this kind of martial law cannot endure ogether, the antogonism is irrecoucliable and in the conflict one or the other must This nation, as experience has proved,

annot always remain at peace and has no

right to expect that it will always have

wise and humane rulers, sincerely attach-

ed to the principles of the constitution.

Wicked men, ambitious of power, with ha-

guarding the foundations of civil liberty

against the abuses of unlimited power;

of history informed them that a trial by ar

stablished court, assisted by an impartial

ury, was the only sure way of protecting

he citizen against oppression and wrong.

shed to establish martial law. The cor

farmies were collected, they were to b

lusion does not follow from the premise

Knowing this, they limited the suspension

they were full of wisdom, and the

tred of liberty, and contempt of law, may the wit of man than that any of its proviions can be suspended during any of the fill the place once occupied by Washingreat exigencies of the government. Such | ton and Lincoln; and, if this right is con a doctrine leads directly to anarchy or des- | ceded, and the calamities of war again becould neither instruct the judges nor control their action, and should not suffer, because, without fault of his, they were unable to render a judgment. But the true able to render a judgment. But the true of the grand jury; and before those who are able to render a judgment. But the true of the grand jury; and before those who are all the powers of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before those who are of the grand jury; and before t potism, but theory of necessity, on which I fall us, the dangers to human liberty are world told them -the nation they were proved by the result of the great effort to anding, be its existence short or long. would be involved in war -how often or how Have any of the rights guaranteed by the nstitution been violated in the case of tell-and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen. For this and other equally weighty reasons, they secured the aheritance they had fought to maintain, ? Certainly no part of judicial power of by incorporating in a written constitution the safeguards which time had proved esie constitution expressly vests it "in one sential to its preservation. Not one of these safeguards can the President, or Congress, or the judiciary disturb, except the ne concerning the writ of habers corpus. It is essential to the safety of every government that, in a great crisis like the one we have just passed through, there should be a power somewhere of suspending the writ of habeas corpus. In every war there are men of previously good character-wicked enough to counsel their fellowcitizens to resist the measures deemed necessary by a good government to sustain mies, and their influence may lead to nquire what those laws and usages are, ngerous combinations. In the emergency hence they originated, where found, and of the times an immediate public investi on whom they operate; they can never be gation, according to law, may not be possi applied to citizens in States which have upsle; and yet the peril to the country may eld the authority of the government, and be too imminent to suffer such persons to where the courts are open and their process go at large. Unquestionably, there is then an exigency which demands that the govknowledge that in Indiana the Federal auernment, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the perand redress grievances; and no use of war sons arrested in answer to a writ of habeas could sanction a military trial there for any corpus. The constitution goes no further. offense whatever of a citizen in civil life, It does not say after a writ of habeas corn no wise connected with the military serpus is denied a citizen, that he shall be vice. Congress could grant no such power; tried otherwise than by the course of the common law; if it had intended this reture be it said, it has never been provoked sult, it was easy by the use of direct words y the state of the country even to attempt to have accomplished it. The illustrious men who framed that instrument were

> to one great right, and left the rest to reenalties against the offenses charged, proided for their punishment, and directed main forever inviolable. But it is insisted hat court to hear and determine them. war demands that this broad claim for And soon after this military tribunal was martial law shall be sustained. If this ended the Circuit Court met, peacefully were true, it could be well said that a comtransacted its business, and adjourned. try preserved at the sacrifice of all the eeded no bayonets to protect it, and recardinal principles of liberty is not worth paired no military aid to execute its judg the cost of preservation. Happily, it is cents. It was held in a State eminently istinguished for patriotism by judges com not so. It will be borne in mind that this is not nissioned during the rebellion, who were a question of the power to proclaim martial rovided with juries, upright, intelligent, law, when war exists in a community and and selected by a marshal appointed by the the courts and civil authorities are over-President. The government had no right thrown. Nor is it a question what rule conclude that Milligan, if guilty, would not receive in that court merited punishmilitary commander, at the head of hi army, can impose on States in rebellion t nent, for its records disclose that it was cripple their resources and quell the insurconstantly engaged in the trial of similar offenses, and was never interrupted in its more extensive. The necessities of the administration of criminal justice. If is was dangerous in the distracted condition service, during the late rebellion, required that the loyal States should be placed within f affairs to leave Milligan unrestrained of the limits of certain military districts, and his liberty because he "conspired against the government, afforded aid and comfort commanders appointed in them; and it orged that this, in a military sense, constio Rebels, and incited the people to insurrection," the law said arrest him, confine ited them the theatre of military opera tions; and, as in this case, Indiana had im closely, render him powerless to do een and was again threatened with invaorther mischief, and then present his case to the grand jury of the district, with proofs of his guilt, and, if indicted, try him on by the enemy, the occasion was fur

he Circuit Court of Indiana, to be proceed

No reason of necessity could be urged

against it, because Congress had declared

d against according to law?

have been vidicated, the law of 1862 enimployed in another locality, where laws forced, and the securities for personal isputed. On her soil there was no hostile liberty preserved and defended. Another guaranty of freedom was broken sot; if once invaded, that invasion was when Milligan was denied a trial by jury. t an end, and with it all pretext for mur-The great minds of the country have difial law. Martial law cannot arise from breatened invasion. The necessity musfered on the correct interpretation to be given to various provisions of the Federal constitution; and judicial decisions has actual and present; the invasion real such as effectually closes the courts and deseen often invoked to settle their true meanoses the civil administration. ing; but until recently no oncever doubted It is difficult to see how the safety of the hat the right of trial by jury was fortified ountry required martial law in Indiana. n the organic law against the power of atrany of her citizens were plotting treason, It is now assailed; but, if ideas can se power of arrest could secure them until be government was prepared for their trial, be expressed in words, and language has cause until after the writ has been issued cause until after the writ has been issued and a return made.

Independently of the provisions of the at the Congress of March 3, 1863, relating to have a proper to be considered to have a proper to bases his claim for relief, and which we will presently consider, can this position will presently consider, can this position will presently consider, can this position of the case of Indiana to hear this cas when the courts were open and ready to try the profession of the law. danger;" and the framers of the constitu-

secording to the course of the common law.

f this had been done the constitution would

The discipline necessary to the efficiency We consisted a page of the Constitution, and the laws authorized by it, this quainst and report in the party is in the privilege of and only sort or naval service. The previous of the public service is amount of the party of the same paper will be sent gratuationally to any one sent in the poster or will be sent gratuationally to any one sent in the poster or while the privilege of the public service is ameniating and the laws authorized by it to suspend the privilege of the party is in the military or naval service. Every one connected with these their jurisdiction. It is also confined to and only service is ameniating and the laws authorized by it, this quains, where the constitution, and the laws authorized exercise of the party is in the military or naval service. Every one connected with these their jurisdiction. It is also confined to any one sent in the proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the military or naval service. The party is in the military or naval service. The proving sent of the party is in the military or naval service. The proving sent of the party is in the party is i

intended, if they differed about the law- 15th of September, 1863, reciting making struction or doubt of their true meaning. created for their government, and, while in Virginia, where the national authority fulness of the imprisonment, and could other things the authority of this statute, render no judgment, the prisoner is remer suspend it. The suspension of the writ that clause of the original constitution tried by the civil courts, All other persons, it does not follow that it should obtain in Indiana, where that anthority was never tion certified under the act of 1802. His but simply denies to one arrested the privi-remedy is complete by writ of error or ap-lege of this writ in order to obtain his by jury; and in the fourth, fifth, and vasion, martial rule may become a necessity n one State, when in another it would b 'mere lawless violence," We are not without precedents in English and American history illustrating our views of this ques tion; but it is hardly necessary to make

> particular reference to them. From the first year of the reign of Edward the Third, when the Parliament of England reversed the attainder of the Earl Lancaster, because he could have been tried by the courts of the realm, and de lare "that in time of peace no man ought be adjudged to death for treason or any other offense without being arraigned and trusted with the guardianship of the con- held to answer, and that regularly when stitution and laws. In no other way can the King's courts are open it is a time of peace in judgment of law," down to the resent day, martial law, as claimed in this ase, has been condemned by all respectable English jurists as contrary to the fundamental laws of the land, and subversive

of the liberty of the subject. During the present century an instrucive debate on this question occurred in Parliament, occasioned by the trial and conviction by court martial, at Demarara, f the Rev. John Smith, a missionary to the negroes, on the alleged ground iding and abetting a formidable rebellion that colony. Those eminent statesmen, ord Brougham and Sir James Macintosh, articipated in that debate, and denounced he trial as illegal, because it did not appear that the courts of law in Demarara ould not try offenses, and that "when the laws can act every other mode of punishing upposed crimes is itself an enormous So sensitive were our revolutionary

thers on this subject, although Boston was almost in a state of siege when General large issued his proclamation of martial thinks right and proper without fixed or law, they spoke of it as an "attempt to supersede the course of the common law, and instead thereof to publish and order the use of martial law." The Virginia Asmment is a failure, and there is an end of sembly also denounced a similar measure iberty regulated by law. Martial law, es- on the part of Governor Dunmore "as an assumed power, which the king himself cannot exercise, because it annuls the law of the land and introduces the most execrable of all systems, martial law." In some parts of the country, during the war of 1812, our officers made arbitrary arrests, and by military tribunals tried cit zens who were not in the military service. These arrests and trials, when brought to the notice of the courts, were uniformly ademned as illegal. The case of Smith, vs. Shaw, and McConnell, vs. Hampton, (reported in 12 Johnson,) are illustrations which we cite, not only for the principl

on, one of whom for many years occupied seat on this bench. It is contended that Lather vs. Borden cided by this court is an authority for the claim of martial law advanced in this case. The decision is misapprehended. That case grew out of the attempt in Rhode Island to supercede the old colonial gov-1663, and as that limited the great right of offrage, and did not provide for its own amendment, many citizens became dissatislong continued, human foresight could not fied because the Legislature would not afford the relief in their power, and without the authority of law formed a new and independent constitution, and proceeded to ssert its author ty by force of arms. The old government resisted this, and as the laring martial law.

bellion was formidable, called out the militia to subdue it, and passed an act de-Borden, in the military service of the d government, broke open the house of Luther, who supported the new, in order to arrest him. Luther brought suit against Borden, and the question was, whether, under the constitution and laws of the State, Borden was justified. This court held that a State "may use its military power to put down an armed insurrection too strong to be controlled by the civil and if the Legislature of the State of Rhode Island thought the peril so great as to require the use of its military forces and the declaration of martial law, there was no ground on which this court could question its authority, and as Borden acted under military orders of the charter government, which had been recognized by the political power of the country, and was upheld by the State judiciary, he was ustified it breaking in o and entering Luther's house. This is the extent of the de-There was no question in issue about declaring martial law under the Fedral constitution, and the court did not consider it necessary even to inquire "to what extent nor under what circumstances that

ower may be exercised by a State," We do not deem it important to examine urther the adjudged cases; and shall, there fore, conclude without any additional refernce to authorities. To the third question then, on which the judges below were opposed in opinion, an answer in the negative must be returned.

It is proper to say, although Milligan's rial and conviction by a military commission was illegal, yet, if guilty of the crimes imputed to him, and his guilt had been as-certained by an established court and impartial jury, he deserved severe punish-ment. Open resistance to the measures deemed necessary to subdue a great rebellion by those who enjoy the protection of government, and have not the excuse even f prejudice of section to plead in their favor, is wicked; but that resistance becomes an enormous erime when it assumes the form of a secret political organization, armed to oppose the laws, and seeks by stealthy ans to introduce the enemies of the coun try into peaceful communities, there to light the torch of civil war, and thus over throw the powers of the United States. Conspiracies like these, at such a juncture, are extremely perilous; and those concerned in them are dangerous enemies to their coun try, and should receive the heaviest penalies of the law, as an example to deter others from similar criminal conduct. It is said the severity of the laws caused them; but Congress was obliged to enact severe laws to meet the crisis; and as our highest civil duty is to serve our country, when in danger, the late war has proved that rigor ous laws, when necessary, will be cheerfully

t this law having been considered in a revious part of this opinion, we will not estate the views there presented. Milligan evers he was a citizen of Indiana, not in the military or naval service, and was denal, composed of gentlemen not trained to the 27th day of the same month, adjourned without finding an indictment or presenthe profession of the law.

It follows, from what has been said on ment against him. If these averments and of the other constitutional safeguards It follows, from what has been said on this shiped, that there are occasions when martial law can be properly applied. If in foreign invasion or civil war the courts are actually closed, and it is impossible to adactually closed, and it is impossible to adact a law of the foreign invasion or civil war the courts are actually closed, and it is impossible to adact a law of the first and the actually closed, and it is impossible to administer criminal justice according to law, then on the theatre of active nuititary operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority thus overthrown to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration, for if this Government is continued after the courts are reinstated, it is a gross userpation of pewer. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of

prisoner of war, how can he be subject ! their pains and penalties. This case, as well as the kindred cases of Bowles and Horsey, were disposed of at the ditional entry required.

Dissenting Opinion as to Power of Congress to Anthorize Military Commissions to try Civilians.

titioner. Our certificate of division of uponic between the Judges of the Circuit Court of a United States for the District of Indicance, Mr. Chief Justice Chave delivered the followcopinion: four members of the court concurring with it brothen in the order heretofore made in a cause, but unable to concur in some importbeen read, think it their duty to make a separate statement of their views of the whole case.

We do not doubt that the Circuit Court for the District of Indiana had jurisdiction of the petition of Milligan for the writ of halosa corpus. Whether this court has jurisdiction aron the certificate of division admits of mere question. The construction of the act authorising such cortificates, which has hitherto premited here, denies jurisdiction in cases where the certificate brings up the whole cause before the court. But none of the adjusticated cases are exactly in point, and we are willing to resolve whatever doubt may exist in favor of the cartiest possible answers to questions involving life and therety.

point, and we are willing to resolve whatever doubt may exist in favor of the cartiest possible answers to questions involving life and therty. We agree, therefore, that this court may properly answer questions certified in such a case as that before us.

The crimes with which Millizan was charged were of the gravest obsractier, and the petition and exhibits in the record, which must here be taken as true, admit his guilt. But whatever his desert of punishment may be, it is more important to the country and to every citizen that he should not be punished under an illegal sentence, sanctioned by this court of last resort, than that be should be punished at all. The laws which protect the liberius of the whole must not which protect the liberius of the whole must be violated or set aside in order to inflict, e-upon the guilty, unauthorised, though meri-iustice. The trial and sentence of Miligan were by

military commission convened in Indiana du-ing the fall of 1865. The action of the commi-sion had been under consideration by Presiden ng the fall of 1905. The action of the commis-sion had been under consideration by President Lincoln for some time, when he himself became the victim of an abhorred conspiracy. It was approved by his successor in May, 1965, and the sentence was ordered to be carried into execu-tion. The proceedings, therefore, had the full-ets sanction of the Executive Department of the

ne most careful committeed of this court. The intenes which it supports must not be set aside except upon the clearest conviction that it can-not be reconciled with the constitution and the constitutional legislation of Congress. We must inquire, then, what constitutions! or statutory provisions have relation to this military

proceeding.
The act of Congress of March 2d, 1861, comprises all the legislation which seems to require consideration in this connection. The constitutionality of this act bashot been questioned, and is not doubted.
The first section antihorized the suspension during the rebellion of the writ of habeas current uring the rebellion of the writ of habens corpu broughout the United States by the President the two next sections limited the authority in

mportant respects.
The second section required that lists of all per ons, being citizens of States in which the all unistration of the lawshad continued unimpar they determine, but on account of the disbe furnished to the Judges of the circuit and dis-trict courts. The list transmitted to the Judges were to contain the names of all persons, resid-ing within their respective jurisdictions, charged with violation of national law. And it was re-quired, in cases where the grand jury in atten-dance upon any of these courts should terminate its session without proceeding by indictment or nguished jurists concerned in the decis-

he terms and conditions prescribed in the st

discharge from imprisonment.

The holding of the Circuit and District court of the United States in Indian; had been uninterrupted. The administration of the laws in the Federal courts had remained uninquired Milligan was imprisoned under the authority of the President, and was not a prisoner of war. No list of prisoners had been furnished to the Judges either of the District or Circuit courts, as required by the law. A grand Jury had attended the Circuit Courts of the Indiana District while Milligan was there imprisoned, and had closed

to be delivered from military custody and

And the express terms of the act of Congress required this action of the court. The prisoner must be discharged en giving such recognisance as the court abould require, not only for good behavior, but for appearance, as directed by the court, to answer and be further dealt with according to law.

The first section of the act authorized the successful of the writ of habens corpus generally throughout the United States. The second and third sections limited this suspension in certain cases within States where the administration of

The commands of the act was a constant of the commands of the condition of

of the petition?

That the third question, namely, Had the military commission in Indiana, under the facts stated, jurisdiction to try and sontonce Milligan! must be answered negatively is an unavoidable inference from affirmative answers to the other The military communications Militagen if he could be detained in prison under his original rest or under sentence, after the close of a saion of the grand jury, without indistment other proceeding sagainst him.

one laws, when necessary, will be cheerfully obeyed by a patriotic people, struggling to preserve the rich blessings of a free government.

The two remaining questions in this case must be answered in the affirmative. The suspension of the privilege of the writ of suspension of the privilege of the writ of course; and on the return made to it, the court decides whether the party applying is denied the right of proceeding any further with it.

If the military trial of Milligan was contrary to law, he was entitled, on the facts stated in his petition, to be discharged from custody by the terms of the act of Congress of March 3, 1863. The provisions of this law having been considered in a low possion was possible after the segular exercise of their functions.

Under it, in such States, the privilege of the motinterupted in the regular exercise of their functions.

Under it, in such States, the privilege of the writ of sat damagerous to the suspended. Any person regarded as dangerous to the passet the suspended. Any person regarded as dangerous to the passet on such terms of the writ, and was dangerous to the passet to such States, the privilege of the writ of sat dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ of as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public affect he writ, and as dangerous to the public

Conclusions.

But the opinion which has just been read go further, and, as we understand it, asserts a further, and, as we understand it asserts a further, and as was not authorized by Congress, but that he has wor of Congress to authorize

We assent fully to all that is said in the opin We assent fully to all that is said in the opin

inderstood and exercised from the adoption. The constitution to the present time.

Nor, in our indgment, does the lifth or any other amendment abridge that power. "One arising in the land and neval forces, or in the willtin in actual service in time of war or public danger," are expressly afterpred from the lifth amount for a expital or other wise infamous crime unless on a presentment or indictance of a grandurs," and it is admitted that the exception are ples to other amendments as well as to the first Now, we understant this exception to be compress in relation to the government of the army and many and the millita had been recited in the amendment, and cases within these position the amendment, and cases within these position the amendment, and cases within these positions.

or had been expressly excepted from the properties. The States, most isology of the properties of the attention of accomments, excluded specially from their electrons ments, excluded specially from their electrons. first indicted by a grand jury, except in cases as may arise in the government and regulation of the land forces." The exception is similar amendments proposed by New York Maryland, and Vitsmin, was in the rame opposed by the States were considered by the first Congress, and such as were approved in substructure of the States. Among those proposed by that here the States. Among those proposed by that disciplination of the States. the fifth ameniment of the constitution. We cannot doubt that this ameniment was intended to have the same force and effect as the ameniment proposed by the States. We cannot arrot to a construction which will impose on the exception in the fifth amendment a sense other than that obviously indicated by action of the

for the government of the army and may b

power to provide for trial and punishment is military courts without a jury. It has been a understood and exercised from the adaption

State conventions.
We think, therefore, that the power of Con-ross, in the government of the land and naval secce, and of the utilitia, is not at all affected by ferces, and of the militia, is not at all affected by
the fifth or any other amendment. It is not no
essary to attempt any process definition of the
boundaries of this power. But may it not be
mid that government includes protection and
defense as well as the regulation of informal administration? And is it impossible to imprine
cases in which citizens comprising or attemption
the destruction or great injury of the national
forces must be subjected by Congress to indiffertrial and purishin, ent in the just exercise of the
midoubted unconstitutional power? Congress
but the agent of the nation, and does not the acarity of individuals against the abuse of this. curity of individuals against the abuse as of every other power, depend on the gence and virtue of the people, on their

gence and virtue of the people, on their real for public and private liberty, upon efficiel reasons ability accured by law, and upon the frequency of elections, rather than upon doubtful construc-tions of legislative powers?

End we do not out our spinless, that Congress might authorize such a military commission as was held in Indiana, upon the power to provide for the government of the national forces.

Congress has the power, not only for raise and support and govern armies, but to declare war. It has, therefore, the power to provide by law for carrying on war. This power necessarily ax-tends to all ingislation essential to the process. tends to all ingritation essential to the prosecu-tion of war with vigor and success, except see as interferes with the command of the forces and the conduct of campaigns. That power and this seloug to the President as Commander in Chief both these powers are derived from the consti-ution, but neither is defined by that instrumen-

The power to make the necessaro laws is in the powers; the power to execute in the President. Both powers imply many subordinate and sux-litary powers. Each includes all authorities essential to its due exercise. But weither can the President, in war more than in peace, intrudention the proper authority of the President, but he proper authority of the President. Both are servants of the propin, whose will is expressed in the fundamental law. Congress cannot direct the conduct of companyon nor can the President, or any commander under him, without the sanction of Congress, institute the business of a centrolling necessity, which justifies what it compels, or at least ensures acts of indemnity from the justice of the legislature.

demnity from the justice of the legislature.

We by no means assert that Congress can establish and apply the laws of war where no was has been declared or exists.

Where peace exists the laws of peace more prevail. What we do maintain is, that when the nation is involved in war, and some portions of the country are invested, and all are exposed to invasion, it is within the power of Congress to determine in what States or districts such great and lemminent public danger exists as justified the authorization of military tribunals for the trial of crimes and offense against the disripting or security of the semy or against the public safety.

In Indiana, for example, at the time of the arrest of Milligan and his compitators, it is expected. arrest of Milligan and his conspirators, it is es-tablished by the papers in the record that the State was a military district, was the theatre of military operations, had been actually invaded

We cannot doubt that, in such a time of public we cannot could take to a constitution, to provide for the organization of a military commission, and for trial by that commission and for trial by that commission and for trial by that commission for trial by that the fact that the Faderal courts were open was regarded by Congress as a sufficient reason for not exercising the power; but that fact could not derive Congress of the right to assesse it.

We have confined ourselves to the question of expediency. And Congress this determine the question of expediency. And Congress this determine it. That hoofy did not rec 3s to authorize trials by military commission in Indiana, but by the strongest implication predicted them. With that prohibition we are establed, and should have remained silent if the nature to the questions certified had been put on that ground, without denial of the existence of a power which is believed to be constitutional and uncortaint.

shedience to their superior officers, and whose ion, whether warranted by law or not, was action, whether warranted by law or not, was approved by that upright and patriotic President under whose administration the public was research from threatened destruction.

We have thus far said little of martial law, nor do we propose to say much. What we have already said sufficiently indicates our opinion that there is no law for the government of the creasens, the armies, or the navy of the United States, within American jurisdiction, which is not contained in or derived from the constitution. And wherever our army or taxy may go.

There are under the constitution in the arms of military jurisdiction—one to be exercised to in peace and war, another to be exercised in inc of foreign war without the boundaries of the United States, or in time of rebuiltin and ivil war within States or districts occupied by Robeis Ireated as beiligecents, and a third to be exercised in time of invasion or insurrection within the limits of that Catled States, or during within the limits of States maintaining within the limits of States maintaining. noministed warrist or temporarily, when the action by Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or evil or foreign war, within districts or localities where ordinary law no longer adequately secured.

ional authority to provide for go We have no apprehension that this pow-r, un

We have to apprehension that this power, under our American system of government, in which all official authority is derived from the people, and exercised under direct responsibility is the people, is more likely to be abused than the power to regulate commerce or power to borrow money. And we are unwithing to give our assent by silence to expression of apinton which seem to us calculated, though not intended, to cripple the constitutional powers of the government, and to angive the public dangers in times of invasion and rebellion.

Mr. Justice Wayne Mr. Justice Swayne, and Mr. Justice Miller moneur with one in their views.

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